

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRIAN FLORES, STEVE WILKS, and RAY	:
HORTON, as Class Representatives, on behalf of	:
themselves and all others similarly situated,	:
	:
Plaintiffs,	:
	:
v.	:
	:
THE NATIONAL FOOTBALL LEAGUE; NEW	:
YORK FOOTBALL GIANTS, INC. d/b/a NEW	:
YORK GIANTS; MIAMI DOLPHINS, LTD.	:
d/b/a MIAMI DOLPHINS; DENVER BRONCOS	:
FOOTBALL CLUB d/b/a DENVER BRONCOS;	:
HOUSTON NFL HOLDINGS, L.P. d/b/a	:
HOUSTON TEXANS; ARIZONA CARDINALS	:
FOOTBALL CLUB LLC d/b/a ARIZONA	:
CARDINALS; TENNESSEE TITANS	:
ENTERTAINMENT, INC. d/b/a TENNESSEE	:
TITANS; and JOHN DOE TEAMS 1 through 26,	:
	:
Defendants.	:
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Civil Action No.: 22-CV-00871 (VEC)

**MOTION FOR LEAVE TO FILE
AMICI CURIAE BRIEF OF LAW PROFESSORS
IN SUPPORT OF PLAINTIFFS' MOTION FOR RECONSIDERATION**

Law professors,¹ by and through their undersigned counsel, hereby seek leave to file an *Amici Curiae* Brief in support of Plaintiffs' Motion for Reconsideration. A copy of the proposed *Amici Curiae* Brief is attached to this Motion as Exhibit A, and a proposed order is attached as Exhibit B. Proposed *Amici* have sought Defendants' consent to the filing of this brief, and Defendants responded that they take no position on whether the Court should permit the brief to be filed.

¹ The names and short biographies of the law professors or proposed *Amici* appear in the appendix of this Motion. Affiliation and membership with certain institutional organizations are set forth in the appendix for identification purposes only, and listing those organizations does not represent their support for this brief.

INTEREST OF PROPOSED *AMICI CURIAE*

Proposed *Amici* are law professors and scholars who focus on dispute resolution, and they are concerned that the Court’s ruling in this case may undermine the equitable administration of arbitration and erode public confidence in arbitration. Proposed *Amici* file this brief to provide additional context regarding the unconscionable designation of NFL Commissioner Roger Goodell as arbitrator for these civil rights disputes.

MEMORANDUM

The Court has inherent authority to accept an *amicus curiae* brief. “There is no governing standard, rule or statute prescrib[ing] the procedure for obtaining leave to file an amicus brief in the district court. Thus, the decision to grant leave to file a brief [as an] *amicus curiae* is in the firm discretion of the court.” *In re Terrorist Attacks on Sept. 11, 2001*, No. 03-CV-9848, 2022 WL 2829691, at *1 (S.D.N.Y. Apr. 27, 2022) (citations and internal quotations omitted). That discretion extends to accepting amicus briefs in support of a motion for reconsideration even though the proposed *Amici* did not participate in the initial briefing regarding the arbitration agreements at issue. *Beljakovic v. Melohn Properties, Inc.*, 542 F. Supp. 2d 238, 244 (S.D.N.Y. 2005) (noting that court had granted leave for the filing of an amicus brief in connection with a motion for reconsideration); *Gibbs v. Se. Inv. Corp.*, 651 F. Supp. 1419, 1419 (D. Conn. 1987) (same); *Bruan, Gordon & Co. v. Hellmers*, 502 F. Supp. 897, 904 (S.D.N.Y. 1980) (permitting amicus to file a brief following the filing of a motion for reconsideration).

As academics who study, teach, and write about dispute resolution, proposed *Amici* can provide a broader context and a unique, neutral, academic perspective to shed light on the issues and deeper implications of this case. More specifically, the attached brief explores the legal history and evolution of employment arbitration, including the development of norms or protocols of

procedural fairness within the arbitration community. This background and legal history help demonstrate the unconscionable nature of the NFL's contracts and how the Court's ruling can negatively impact dispute resolution. Without duplicating Plaintiffs' arguments, the attached brief demonstrates the Court should reconsider its prior ruling and find that it is unconscionable and a violation of procedural norms of fundamental fairness for NFL Commissioner Roger Goodell to hear Plaintiffs' civil rights claims against the NFL and its teams.

No one, except for proposed *Amici Curiae*, authored the attached brief in whole or part, and no one made a monetary contribution for the preparation or submission of the brief.

CONCLUSION

For the reasons set forth above, proposed *Amici* respectfully request leave of Court to file the attached *Amici Curiae* Brief in this case.

Dated: March 21, 2023
New York, New York

By: /s/ Kevin Mintzer
LAW OFFICE OF
KEVIN MINTZER, P.C.
Kevin Mintzer
1350 Broadway, Suite 1410
New York, New York 10018
Attorneys for Proposed Amici
646-843-8180
km@mintzerfirm.com

Appendix

Biographies of *Amici*

Gilat Juli Bachar is an Assistant Professor of Law at Temple University Beasley School of Law, where she teaches Torts, Professional Responsibility, and a seminar in Dispute Resolution. She was previously a Visiting Assistant Professor at Villanova University School of Law, teaching Contracts and Dispute Resolution. Prior to Villanova, Gilat was a research fellow with the Stanford Center on the Legal Profession, and a Stanford Law School Public Interest Fellow at the Center for Justice & Accountability in San Francisco where she worked on social justice tort litigation in federal courts. Gilat graduated with a JSD from Stanford Law School in 2018, where her research won one national and two school-wide awards, as well as numerous research grants. Prior to coming to Stanford, she clerked for the Israeli Chief Justice, worked as an associate in one of Israel's leading litigation firms, and earned an LL.B. in Law and an M.B.A. in Business Administration, both summa cum laude, from the Hebrew University of Jerusalem. Her work, which has been published or is forthcoming in journals such as the Arizona State Law Journal, Cardozo Law Review, Hastings Law Journal, and Chicago Journal of International Law, investigates both theoretically and empirically how lay people, disputants and lawyers perceive and apply legal concepts like accountability, confidentiality and deterrence and how their perceptions inhibit or help produce social change.

Rick Bales is a faculty member at Ohio Northern University Law School. He teaches a wide variety of labor/employment and ADR courses, Torts, and Civil Procedure. He has published more than 100 scholarly articles and authored or co-authored 10 books on a variety of topics related to labor/employment/ADR. Rick also is a labor arbitrator. He is a member of the National Academy of Arbitrators and the College of Labor and Employment Lawyers, and he serves on FMCS, AAA, SERB (Ohio), MERC (Michigan), and Houston Police panels. In 2010, Rick served as a Fulbright Specialist providing dispute resolution training to labor judges in Malaysia. Three years later, he again served as a Fulbright Specialist, this time in Indonesia. His time in Malaysia led to his becoming familiar with the Cambodian Arbitration Council – a model for labor-arbitration design throughout Southeast Asia. That, in turn, led to several opportunities to work with the Solidarity Center to provide dispute-resolution training to garment workers in Myanmar. The goal – since disrupted by the 2021 military coup – was to provide tripartite (labor, management, neutrals) training there in labor dispute resolution.

George A. Bermann is a Professor of Law and director of Center for International Commercial and Investment Arbitration (CICIA), Columbia Law School; international commercial and investment arbitrator since 1980; founding member, Governing Board, ICC International Court of Arbitration; director of global board, New York International Arbitration Center (NYIAC); editor-in-chief, “American Review of International Arbitration;” patron, Chartered Institute of Arbitrators; president of board of Thai International Arbitration Center (Bangkok, Thailand); president of board of Center for International Investment and Commercial Arbitration (Lahore, Pakistan); professor, MIDS program in international dispute resolution (Geneva); Professor, Sciences Po LL.M. (Paris); Chief Reporter of ALI Restatement of the U.S. Law of International Commercial and Investment Arbitration; author of “Twilight Issues in International Arbitration,” “International Arbitration and Private International Law” (Hague General Course in Private

International Law); “Mandatory Law in International Arbitration,” “Nutshell on International Commercial Arbitration,” “Nutshell on Transnational Litigation;” Lifetime Achievement Award, American Society of Comparative Law; past president, International Academy of Comparative Law; past president, American Society of Comparative Law; honorary degrees, University of Fribourg (Switzerland), University of Versailles-St. Quentin (France); Nova University of Lisbon (Portugal); University Cesar Vallejo (Lima, Peru); founder and past editor-in-chief, “Columbia Journal of European Law;” founder and former director, European Legal Studies Center, Columbia Law School.

Benjamin Davis is Emeritus Professor of Law of the University of Toledo College of Law and a Visiting Professor of Law at Washington and Lee School of Law with 23 years experience in academia. He is a former Chair of the American Bar Association Section of Dispute Resolution. Some of the subjects he teaches are Alternative Dispute Resolution, International and Domestic Arbitration, and Contracts. Prior to entering academia, for ten years he was the American Legal Counsel at the Secretariat of the International Court of Arbitration of the International Chamber of Commerce in Paris, France, where he directly supervised around 1000 international commercial arbitrations and mediations.

Ylli Dautaj is an Adjunct Professor at Penn State Law, U.S.; Lecturer, Brunel University London, U.K.; visiting lecturer Uppsala University, Sweden; and Managing Partner at DER Legal, Sweden. Ylli focuses his practice and scholarship on international arbitration, commercial law, and international economic law. He has published numerous academic articles and books on commercial law, international arbitration, and public international law, including e.g., with Manchester Journal of International Economic Law, Brill Research Perspectives, American Review of International Arbitration, The International Lawyer, Fordham International Law Journal, Cornell International Law Journal, and Dispute Resolution Journal.

Michael Z. Green has served as a full professor at Texas A&M University School of Law since its beginning in August 2013 and as the Director of its Workplace Law Program since 2015. He has published several law review articles and book chapters in support of his scholarly agenda focused on workplace law issues and their intersection with dispute resolution and race. He has also discussed his scholarly endeavors at many national and international venues. As a member of the Labor Law Group, a collection of scholars engaged in producing quality casebooks for instruction in labor and employment law, he is a co-author of the Fourth Edition of ADR in the Workplace by West, published in 2020. In September 2019, he was selected as a member of the National Academy of Arbitrators in recognition of his scholarly achievements and service as a labor arbitrator.

Deborah Hensler is the Judge John W. Ford Professor of Dispute Resolution at Stanford Law School, where she teaches courses on domestic, international and investor state arbitration and global litigation. She has written extensively on court-connected ADR and arbitration and conducted empirical research on the uses of arbitration.

Ariana R. Levinson is a Professor of Law and the Associate Dean for Intellectual Life at the University of Louisville Louis D. Brandeis School of Law where she teaches Employment Law, Dispute Resolution, and Arbitration Practice. Professor Levinson is also a fellow in the Rutgers

School of Management & Labor Relations Institute for the Study of Employee Ownership & Profit Sharing. Professor Levinson has published six law review articles about arbitration and is a co-author of the West Concise Hornbook Principles of Arbitration Law. She is the faculty advisor for the Brandeis School of Law ABA Student Division Mock Arbitration Team and for the Wagner Moot Court Team. Professor Levinson is admitted to practice in Indiana and California. She graduated magna cum laude from the University of Michigan Law School. During law school, she served as a contributing editor on the Michigan Law Review and was awarded the Robert S. Feldman Labor Law Award for the most outstanding work in that field.

Mnotho Ngcobo is an esteemed legal scholar with expertise in alternative dispute resolution (ADR) and a passion for sports arbitration and access to justice. He is a fellow of the American Bar Association, Section on Dispute Resolution, and serves as a distinguished lecturer of law at Jindal Global Law School, where he also serves as a fellow of the Centre for Alternative Dispute Resolution. Mnotho has extensive experience as an ADR specialist in the United States, South Africa, and India, and is highly regarded for his exceptional research and publications in this field. Mnotho has successfully handled arbitration cases involving sports law and has a profound understanding of the unique challenges and intricacies involved in these cases. He holds a Master of Laws in Dispute Resolution from the University of Missouri and is an admitted attorney of the high court of South Africa.

Alexi Pfeffer-Gillett is a Visiting Assistant Professor at the University of Maryland Carey School of Law and an incoming Assistant Professor at the Washington & Lee University School of Law. He previously clerked for Judge Mary M. Schroeder on the United States Court of Appeals for the Ninth Circuit and has experience in class-action securities litigation. His scholarship has appeared or is forthcoming in the University of Pennsylvania Law Review, the Minnesota Law Review, the Duke Law & Technology Review, and the California Law Review. Professor Pfeffer-Gillett earned his J.D. from the University of California, Berkeley, School of Law.

Andrea Kupfer Schneider is a Professor of Law and Director of the Kukin Program for Conflict Resolution at Cardozo School of Law. Professor Schneider was the previous director of the nationally ranked ADR program at Marquette University Law School in Wisconsin, where she taught ADR, Negotiation, Ethics and International Conflict Resolution for over two decades. In addition to overseeing the ADR program, Professor Schneider was the inaugural director of the university's Institute for Women's Leadership. Professor Schneider has published numerous articles on negotiation, plea bargaining, negotiation pedagogy, ethics, gender and international conflict. Her books include Discussions in Dispute Resolution: The Foundational Articles, edited with Art Hinshaw and Sarah Cole (Oxford University Press 2021) (winner of the 2022 CPR Book Award); and multiple textbooks in the field. She is a founding editor of Indisputably, the blog for ADR law faculty, and started the Dispute Resolution Works-in-Progress annual conferences in 2007. In 2016, she gave her first TEDx talk titled Women Don't Negotiate and Other Similar Nonsense. She was named the 2017 recipient of the ABA Section of Dispute Resolution Award for Outstanding Scholarly Work, the highest scholarly award given by the ABA in the field of dispute resolution.

Imre Stephen Szalai is the Judge John D. Wessel Distinguished Professor of Social Justice at Loyola University New Orleans College of Law. He is a graduate of Yale University, and he received his law degree from Columbia University, where he was named a Harlan Fiske Stone Scholar. His teaching and scholarly passion focus on dispute resolution, arbitration, and arbitration law. For two decades, he has extensively studied the uses of arbitration and the development of arbitration law in the United States from the colonial period to the present, and he has written books, book chapters, and articles about the history and development of the FAA. His scholarship has appeared in top journals of dispute resolution, and he maintains a blog focusing on arbitration law, www.arbitrationusa.com. He also serves as a commercial arbitrator.